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NOTES AND COMMENTS.

THE FAILURE OF THE JURY SYSTEM.

CHANCE stands at the threshold of the jury system, as jurors are selected by lot, regardless of their ability to weigh close questions of fact. Ignorance follows in the footsteps of chance, since the man who has formed opinions upon the topics of the day is liable to challenge.

The system by its operation forces a man from his bank or store, his farm or mill, and brings him into a court-room to decide a question upon the evidence as introduced in writing or by witnesses. Not accustomed to the place, he wonders at all that passes around him. In what state of mind is he to intelligently listen to and decide a question that may involve the financial interests of his neighbor or the life of a fellow-man? If a man whose time is of value, he cannot be expected to give close attention to the evidence when his thoughts have wandered to his business and he chafes beneath an imprisonment which may be of great damage to him. Men's opinions are influenced by their surroundings. Such a man is not in a condition to render intelligent and impartial verdicts.

Some argue that the good of the public should influence men to sacrifice their personal advantage, so that the able business and professional men of the land, whom no one would dare to approach with a bribe, might consent to serve on juries. Granted that this ought to be the case: but what ought to be is one thing; what is, quite another. All men ought to behave themselves, and then we would have less occasion for juries; but they will not do it.

We are viewing this question just as it now is, and not in the light which fancy may picture.

It is conceded and deplored that the men who are the best qualified to sit as jurors, if drawn, make some pretext which the court deems a sufficient excuse for them. Their places are filled by the incompetent. However, disregarding the danger of corruption and assuming that juries are composed of men of average intelligence, is it to be expected that they will render just verdicts?

From the very nature of the system, no.

In its infancy trials were very brief, one day, perhaps, being sufficient for the longest, and the interests involved were limited in importance. Then men of average intelligence could grasp and retain the material points in the evidence, at least until they had reached the jury-room. To-day trials run into months, so that before a case has been half-completed nearly all

that has gone before is either a perfect blank to the majority of the jury or has become so confused that it is impossible for them to unravel it.

One never sees a member of a jury make a note of any of the points in evidence. Unaccustomed as he may be to memorizing numerous facts, he is expected to store in his memory for weeks or months all that the witnesses may say—a palpable impossibility.

Again, with an advancing civilization come new and varied interests, vast in proportions, which must be determined not by mere guesswork, but by men trained in weighing questions of moment and sifting the essential from the rubbish. Millions are to-day involved where hundreds once figured. To cope with all these conflicting questions requires more than the training acquired by a man on the farm, in the coal mine, the store, or the workshop. It needs men who by habits of life and thought have acquired the faculty of analyzing a proposition and deducing a correct conclusion and not a guess. Men of this class are not found—it is not expected that they will be found—among those who are drawn by chance.

No member of a jury is expected to know anything about the law applying to the case, but still, with millions of property or perhaps a human life at stake, he is expected to apply the law to the facts, and sits for his first lecture. That the long and learned instructions of the court fall by the wayside is only too evident, demonstrating the absurdity of a system that presumes them to be of value.

Confusion of law and fact is the result. You might as well call twelve men to the bedside of a sick man, and, after they had heard the facts as to his condition from the lips of the patient, the nurse, and his family, with instructions or a lecture from the attending physician sitting as judge, let them retire to a jury-room, there determine what afflicts the patient, and so inform the physician, who, like the judge, must then give the medicine according to the verdict.

Ten hundred and sixteen jurors were called and fifty-three days consumed before a jury was secured to try the Cronin case in Chicago, and the trial lasted one hundred and seven days, at an enormous expense; while eight men are under indictment for tampering with that jury.

The residents of New Orleans waited a month for the end of the trial of the Mafia, and then took fifteen minutes to accomplish what a jury by bribery or intimidation failed to do.

Chicago cannot afford to spend her time and money in trying a case under a system which but manufactures new criminals when attempting to convict the old.

The city of New Orleans should not be compelled to appall the civilized world by meeting crime with crime, at a great cost of time and money.

But waste of time and great expense are only slight incidents in comparison with the most glaring absurdity of the system—the rule requiring unanimity in the jury.

How difficult it is for two men of equal intelligence to draw the same conclusion from facts stated! Much more difficult it must be to call twelve men of different occupations, manners, and degrees of intelligence, and require them to think as a unit.

When the unanimity of twelve men was first required, a jury was composed of those who had personal knowledge of the question in dispute and were only witnesses. The rule was that twelve persons should be found who would agree upon a verdict. It was simply the amount of the evidence

that was the spirit of the rule. Modern practice limits the number to twelve, making them a mere machine. Why the number twelve? Why should twelve be more capable than six? Why unanimity in finding a verdict when we trust a majority of the legislature to enact laws, a majority of the judges in a higher court to interpret them, and one man to enforce them? Unanimity breeds stubbornness, resulting in disagreement or an unreasonable verdict. Unanimity puts it in the power of one man to render worthless the result of weeks of labor and time of the court, attorneys, parties, jurors, witnesses, and all connected with the administration of justice. Further, it opens the door to corruption, since one out of twelve can be more easily bribed than a greater number.

We pass the fact that this system cannot but have a demoralizing effect upon practitioners at the bar, encouraging sophistry and chicanery, the inconsistency of allowing a jury to find a verdict and then permitting a court to set it aside, and call attention to that feature which in modern times threatens the very foundations of all government. It is the disregard that certain members of a jury may have for laws which conflict with their personal interest or against which they have a prejudice. The most notable are the laws on the liquor and Sunday questions. No matter how guilty the defendant, it is seldom that a jury will agree upon a conviction, thus practically repealing the laws through the prejudice of perhaps one man.

Leave the same questions to a court, and it would not dare to openly nullify the law, no matter what might be its personal feeling. It is the individual responsibility placed upon courts and their natural regard for all law that insure its proper administration by them. It is the lack of regard by certain jurors for all law that does not suit their fancy, and the screen which the secrecy of the jury-room affords, that make it possible for this abuse to exist. If the laws are unjust, a rigorous enforcement of them will effect their repeal by the proper authority; but so long as they do exist, that instrument, the jury, which is supposed to aid in carrying them out, should not be permitted to render them fruitless through the violation of the oath of one of its members.

Now that some of the faults of the system have been examined, it might be asked, what shall take its place? The answer is, a bench composed of a reasonable number of judges, three or five, who receive their office for life, by appointment.

First, there should be more than one judge, that he may be aided by the counsel of his associates, and so avoid the least suspicion of favoritism or prejudice.

Second, the court should receive its position by appointment and should not be composed of members of one political party, so that the administration of justice may be taken out of politics and its corrupting influences.

Some fear corruption through this plan. With it should come liberal laws for inquiring into the acts of such judges, and their removal if unfit. By paying them well for their services you at once remove the greatest motive that can corrupt any man, and place them in a position where they can be unmindful of public opinion.

Others argue that a bench of judges is too far removed from the common affairs of life to be able to decide questions of fact; seeming to forget that, as a rule, our judges have risen from the humblest walks of life, and have come into personal contact with the varied affairs of men. Men when they become judges do not necessarily lose their common-sense. Instead of being less

competent than an ever-changing jury, they are the better qualified to judge of facts, since cases involving the same or similar questions will occur time and again, giving them knowledge by experience.

By this plan you no longer place a premium on ignorance, and you secure what is the prime object of every suit, allowing every one to assert his rights speedily, with the least expense and the highest degree of certainty.

CHARLES A. THATCHER.

A TERRIBLE POSSIBILITY.

"Now a bubble burst, and now a world."

OVID says that while Jupiter made the body of the brute to extend horizontally, its face looking upon the ground, he made man to stand erect, his gaze fixed upon the stars. This may have been the original intention, but if we may trust that most faithful of all mirrors, the daily press, the gaze of the average modern man would be better accommodated by the horizontal than by the erect position of the body. The gems which stud the heavens may be brighter and more numerous than those which lie buried in the ground, but they are not so available as collateral.

Now and then, however, the heavenly bodies assume a negative value which commands the attention of other men than astronomers. Some far-off star explodes, involving its retinue of planets in stupendous ruin. Why may not a similar fate befall our own star, the sun? Then what would become of us and our collateral? The possibility of such a catastrophe invests the sun with a sudden dignity and importance, which the beneficent glory, the unmenacing splendor, of ages could not give him. The common eye is momentarily lifted from the ground; even the daily newspaper honors the grand old luminary with a column or two. This is most apt to follow upon an especially active period of spots, with the consequent meteorological disturbances, like that which has recently occurred.

Science has delivered us from the terrors which afflicted the childhood of our race. Comets, those hobgoblins of the skies, and eclipses, those frightful feints of the angry gods, no longer blanch the faces of men. But for every imaginary terror she has banished, science has revealed a real danger. Microbes and bacteria replace the malevolent sprites of the water and the air; and in the spectacle of the actual conflagration of systems, men have forgotten their childish fear of comets and eclipses. The ghosts of the night have gone, but the sword, bullet, and torch, so to speak, of the day have come.

As we have asked, why may not our sun explode, or burst forth suddenly into such overwhelming intensity of radiation that the earth and all her sister-planets shall be shrivelled like insects in a glowing furnace? It would be an insignificant casualty in the universe, the extinguishment of but a single spark in the all-pervading fire.

Change is the law of all physical being. Nothing is immortal but the ultimate atom. The sun and its planets had a beginning: they must have an end. When will that end come? Not for many æons yet, we hope. But though we all hope to die at a good old age, some of us must die to-morrow. If to-night the astronomer describes some remote system "into ruin hurled," to-morrow night may see our own sharing the same fate.

This is possible, but not probable. Though death is the destiny of all, monads, men, and worlds alike, as a rule it does not come without ample